

material issues of fact or law presented on the record, and the appropriate order.

§957.22 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final agency decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§957.23 Modification or revocation of orders.

A party against whom an order of debarment has been issued may file an application for modification or revocation thereof. The Docket Clerk shall transmit a copy of the application to the General Counsel, who shall file a written reply. A copy of the reply shall be sent to the applicant by the Docket Clerk. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§957.24 Computation of time.

A designated period of time under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§957.25 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding shall constitute the official record of the proceeding.

§957.26 Public information.

The Law Librarian of the Postal Service shall maintain for public inspection in the Law Library copies of all final decisions. The Docket Clerk maintains the complete official record of every proceeding.

§957.27 Suspension.

(a) Any firm or individual suspended under section 1, part 6 of the Postal Contracting Manual who believes that his suspension has not been in accord-

ance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Department Head who ordered the suspension within 20 days of the date upon which the respondent has been notified of his suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with his appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of §957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976]

§957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO PROVIDE POST OFFICE BOX OR CALLER SERVICE AND THE TERMINATION OF POST OFFICE BOX OR CALLER SERVICE

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11578, June 16, 1971, unless otherwise noted.

§ 958.1 Authority for rules.

The Judicial Officer promulgates the rules in this part pursuant to authority delegated by the Postmaster General.

§ 958.2 Scope of rules.

The rules in this part shall be applicable to cases in which a postmaster has issued a Determination denying an application for post office box or caller service, or terminating the box or caller service being provided to a customer, and in which a Petition in opposition to that Determination has been filed.

[46 FR 62847, Dec. 29, 1981]

§ 958.3 Petition; notice of hearing; answer; summary judgment.

(a) *Petition.* Any applicant or customer who receives a postmaster's Determination may oppose it by filing, in triplicate, a written Petition stating his reasons for opposing the Determination. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the postmaster who issued the Determination, or by otherwise delivering it to the postmaster's office. The Petition must be filed within twenty days (Sundays and holidays included) after the date on which the Petitioner received the Determination. The postmaster shall immediately forward two copies of the Petition to the Recorder, Judicial Officer Department, U.S. Postal Service, Washington, DC 20260-6100.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a

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hearing on a date not later than 30 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel of the Postal Service shall file an Answer to the Petition within fifteen days after the date the General Counsel received a copy of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the General Counsel or the Petitioner, or on his or her own initiative, the presiding officer may find that the Petition and Answer present no genuine or material issues of fact requiring an evidentiary hearing and may thereupon render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken.

[46 FR 62847, Dec. 29, 1981]

§ 958.4 Hearings.

Hearings are held at the Headquarters Office of the U.S. Postal Service, Washington, DC, or such other location as may be designated by the presiding officer. Not later than 5 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Washington, D.C. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11578, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 958.5 Election as to hearing.

If both parties so elect, they may waive an oral hearing and submit the matter for decision on the basis of the appeal and answer, with the approval of the presiding officer and subject to

the right of the presiding officer to require the parties to furnish such further evidence or such briefs as the presiding officer may deem necessary. The request to waive oral hearing shall be mailed to the presiding officer not later than 10 days prior to the date set for the hearing.

§958.6 Default.

If a person who has not waived oral hearing fails, without notice or without adequate cause, satisfactory to the presiding officer, to appear at the hearing, the presiding officer shall issue an order dismissing the appeal. If no protest to such order of dismissal is received within 10 days from the date of issuance of the order, such order shall become final. Any protest to the order of dismissal received within 10 days from the date of its issuance shall be given such consideration as the presiding officer deems to be warranted by the facts and circumstances alleged in the protest. An order of dismissal issued under this section by an Administrative Law Judge may be appealed to the Judicial Officer within 10 days from the date of the order.

[36 FR 11578, June 16, 1971, as amended by 42 FR 30504, June 15, 1977]

§958.7 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law, or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges by rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party. When the Judicial Officer presides at the hearing, he shall, in his sole discretion, render a tentative or final decision after the conclusion of the hearing. Exceptions may be filed to a tentative decision in accordance with §958.10.

[36 FR 11578, June 16, 1971, as amended at 38 FR 20263, July 30, 1973; 42 FR 30504, June 15, 1977]

§958.8 Proposed findings of fact and conclusions of law.

Unless otherwise ordered by the presiding officer, proposed findings of fact and conclusions of law and supporting arguments shall be submitted orally or in writing at the conclusion of the hearing.

§958.9 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable following the conclusion of the hearing, and the receipt of the proposed findings, if any. The initial decision shall become the final agency decision if a timely appeal is not taken.

§958.10 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§958.11 Final agency decision.

The Judicial Officer shall render a final agency decision or he shall refer the matter to the Postmaster General or the Deputy Postmaster General for such final decision. The decision shall be served upon the parties and upon the postmaster at the office where the box is located.

§958.12 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§958.13 Petition to revoke, amend, or modify.

A party against whom an order has been issued may file a petition for the revocation, amendment or modification thereof. The Docket Clerk shall transmit a copy of the petition to the General Counsel, who may file a written reply. A copy of the reply shall be sent to the petitioner by the Docket

Clerk. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 958.14 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

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AUTHORITY: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

SOURCE: 39 FR 33213, Sept. 16, 1974, unless otherwise noted.

§ 959.1 Authority for rules.

These rules are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 959.2 Scope of rules.

These rules apply to all Postal Service proceedings in which part 310 of this title authorizes appeals to the Judicial Officer from demands for postage for matter carried in violation of the Private Express Statutes, and in proceedings to revoke, as to any person, the suspension of provisions of the Private Express Statutes in accordance with part 320 of this title.

§ 959.3 Office, business hours.

The offices of the officials mentioned in these rules are located at the U.S. Postal Service, 475 L'Enfant Plaza West SW., Washington, DC 20260, and are open, Monday through Friday except holidays, during the normal business hours of the Postal Service.

§ 959.4 Demands for payment of postage.

Final demands for payment of postage will be accompanied by a copy of these rules and will:

- (a) State that the demand is final unless appealed under these rules within 15 days after receipt of the demand;
- (b) Describe the transaction on which the demand is based and the provisions of law or regulation alleged to have been violated; and
- (c) State the manner in which the amount of the demand is computed.

§ 959.5 Appeals from demands.

(a) A party upon whom a demand for postage has been made may appeal from the demand by filing a petition, in triplicate, with the Docket Clerk, Judicial Officer Department, within 15 days after receipt of the demand.

(b) The petition shall:

- (1) Be signed personally by an individual petitioner, by one of the partners of a partnership, or by an officer of a corporation or association;
- (2) State the reasons why the person filing the petition (designated the "Petitioner" in these rules) believes the demand is not justified;
- (3) Admit or deny each fact alleged in the demand and allege any facts upon which the Petitioner relies to show compliance with applicable laws and regulations; and,
- (4) Be accompanied by a copy of the demand.